# COMMENTS TO PROPOSED MCR 2.512, MCR 2.513, & MCR 2.514

By Daniel J. Van Antwerp ex-D36 P21703 October 25, 2006

### Rule 2.512

## (A) Request for Instructions

(5) ADD AFTER FIRST SENTENCE: "With the approval of the court on the record, the parties may waive any statements or theories being given from either those submitted by the parties or by the judge sua sponte."

## Rule 2.513

# (A) Preliminary Instructions

I OBJECT TO THE SECOND LAST SENTENCE THAT READS: "The court shall provide each juror with a copy of such instructions." THIS IS A WASTE OF TIME. OFTEN THE ATTORNEYS JUST CITE THE SJI NUMBER (I SEE NO REQUIREMENT FOR THE REQUESTED SJI TO BE TYPED OUT IN ITS ENTIRETY ONLY IN THIS SECTION OF THE PROPOSED RULE). FOR THAT REASON, PLUS "SPECIAL" INSTRUCTIONS ARE SOMETIMES HANDWRITTEN. IT PUTS A BURDEN ON THE COURT STAFF TO TYPE AND COPY SUCH NUMEROUS PRELIMINARY INSTRUCTIONS. FURTHERMORE, THE JURY DOESN'T WANT TO PHYSICALLY CARRY AROUND FIVE OR TEN PAGES DURING A LENGTHY TRIAL – IS THAT YOURS OR IS THAT MINE? – I LOST MY PAGE ELEVEN, MAYBE I CAN COPY YOURS ON THE BACK OF MY PAGE TEN OR TWELVE? ANOTHER JUROR SAYS HER HUSBAND LOOKED AT THE INSTRUCTIONS AND THAT HER INTERPRETATION OF THEM WAS ALL WRONG. FURTHERMORE, SHE HAD BEEN CARRYING THEM AROUND DILIGENTLY SO FAR FOR TWO WEEKS, AND YESTERDAY SHE HAD SOUP IN THE CAFETERIA AND SPILLED THE SOUP ON HER COPIES – IT WENT THROUGH ALL TEN PAGES!

- (D) Interim Commentary. RULE DOESN'T STATE THAT PERMISSION SHOULD BE SOUGHT BEFORE LAUNCHING INTO IT.
- (E) Reference Documents. WITNESSES SOMETIMES ARE UNKNOWN UNTIL THE END OF EACH SIDE'S CASE. I'VE HAD LISTS OF SIXTY PERSONS ON EACH SIDE AND ONLY EIGHT OR TEN ARE CALLED. I ALWAYS ASK THE ATTORNEYS BEFORE STARTING THE TRIAL WHICH ONES THEY PROBABLY WILL CALL SO I CAN QUESTION THE JURORS WHETHER THEY KNOW THEM. BUT TACTICS OF THE TRIAL CHANGE ON WHOM ARE CALLED. AN ATTORNEY WOULD LOOK BAD IF HE FURNISHES A LIST AND SAYS HE'S

GOING TO CALL CERTAIN WITNESSES AND DOESN'T. AND WHAT ABOUT REBUTTAL WITNESSES? IT WOULD BE A GREAT HELP IF A BLACKBOARD OR LARGE PAD OF PAPER IS AVAILABLE IN THE COURTROOM AND THE NAME OF EACH WITNESS IS LISTED AS HE/SHE IS CALLED.

- (F) Deposition Summaries. THIS JUST ENCOURAGES FIGHTING BETWEEN THE ATTORNEYS OVER THE LANGUAGE USED AND WHAT THE WITNESS ACTUALLY SAID. IT WOULD TAKE UP TOO MUCH TIME FOR ARGUMENT AND RETYPING AND MORE RETYPING (WHO WOULD DO THAT?). I THINK THIS SECTION SHOULD BE DELETED. IT WOULD BE BETTER SAVED FOR CLOSING ARGUMENT.
- (J) Jury View. THERE'S A MYRIAD OF QUESTIONS IN THE MINDS OF THE JURORS WHEN VIEWING A SCENE, FOR EXAMPLE, DISTANCES, WHOSE BLOOD STAINS WERE THOSE, ANGLES OF PARTIES, WHERE PARTIES WERE POSITIONED, ETC. THE RULE DOESN'T SPEAK TO HOW THOSE QUESTIONS WILL BE ANSWERED. ARE THE JURORS ALLOWED TO POINT OUT TO THE OTHER JURORS THEIR OBSERVATIONS OF AN IMPORTANT ITEM. CAN THE JURORS DISCUSS AMONG THEMSELVES THINGS THEY SPOTTED. THE RULE DOESN'T SPEAK TO THESE MATTERS.

## (K) Juror Discussion. A GOOD CHANGE.

(N)(3) Copies of Final Instructions. I EMPHATICALLY BELIEVE THIS SHOULD BE OPTIONAL. ESPECIALLY FOR SHORT TRIALS IT IS DEFINITELY A WASTE OF TIME. SEE MY COMMENT TO 2.513 (A). IT INVOLVES A LOT OF COPYING, TYPING OUT HANDWRITTEN REQUESTS (WHO'S GOING TO DO IT?), ETC., EVEN FOR LONGER TRIALS IT SHOULD BE "may" INSTEAD OF "shall," ESPECIALLY IN THOSE INSTANCES WHERE THEY HAVE ALREADY RECEIVED A COPY OF THE STATUTE, ELEMENTS, OR OTHER SUCH DOCUMENTS.

#### Rule 2.514

(A) Majority Verdict. PLEASE INCLUDE THAT THE PARTIES AND THE COURT MAY AGREE ON A VERDICT BEING ACCEPTED WHEN DELIVERED BY A AGREED AND CERTAIN NUMBER OF THE SITTING JURORS OF SIX, OR LESS OR MORE THAN SIX, JURORS IN A CIVIL CASE. IT'S NOT CLEAR AS WRITTEN.

ALSO, I'VE HAD A CASE WHERE FIVE JURORS AGREED ON LIABILITY AND FIVE DIFFERENT ONES AGREED ON THE DAMAGES. THIS RULE SHOULD COVER THAT SITUATION.

## ADDITIONAL COMMENT:

NO WHERE IN THE RULES PRESENTED DOES IT STATE WHAT PENALTIES SHOULD BE IMPOSED IF, FOR EXAMPLE, A LAZY ATTORNEY DOES NOT COMPLY WITH THOSE RULES. CONTEMPT OF COURT, DISMISSAL OF THE CASE, MISTRIAL, OR DEFAULT JUDGMENT ARE SOME OF THE POSSIBILITIES I CAN THINK OF. WHAT ABOUT AN ATTORNEY WHO IS AT ODDS WITH THE COURT AND DELIBERATELY REFUSES TO COMPLY (E.G. SUBMITTING A STATEMENT OF ISSUES).

I'M SORRY THAT MY COMMENTS HAVE BEEN SO CASUAL. I WISH I HAD MORE TIME TO POLISH THEM UP.

DJV